



Home Office

## **Country Policy and Information Note**

### **China: Fear of punishment for crimes for which the person was already charged in another country ('Double jeopardy' or re-prosecution)**

**Version 2.0**

**March 2018**

# Preface

## Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in [the basis of claim](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis of COI; and (2) COI. These are explained in more detail below.

## Analysis

Analysis involves an assessment of the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – describing these and their inter-relationships and providing an assessment on whether, **in general**:

- A person is reasonably likely to face a real risk of persecution or serious harm
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- Claims are likely to justify granting asylum, humanitarian protection or other form of leave
- If a claim is refused, it is likely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case’s specific facts.

## Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation’s (ACCORD), [Researching Country Origin Information – Training Manual, 2013](#). Namely, taking into account the COI’s relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a [terms of reference](#) which sets out the general and specific topics relevant to this note.

Information has been considered up to the “cut-off” date in the country information section. Any other event taking place or report/article published after this date is not included.

All information is publicly accessible or can be made publicly available and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion.

Factors relevant to the assessment of the reliability include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, providing a comprehensive and up-to-date picture of the subject at the time of publication.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the [bibliography](#).

## Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email [the Country Policy and Information Team](#).

## Independent Advisory Group on Country Information

The [Independent Advisory Group on Country Information](#) (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

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# Analysis

Updated: 15<sup>th</sup> March 2018

## 1. Basis of claim

- 1.1.1 Fear of punishment on return to China for a crime for which the person had committed, or allegedly committed, and been charged in another country ('double jeopardy').

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## 2. Consideration of issues

### 2.1 Credibility

- 2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).
- 2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).
- 2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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### 2.2 Exclusion

- 2.2.1 If there are serious reasons for considering that the person has committed a criminal offence, then decision makers must consider whether one of the exclusion clauses – in particular Article 1F(b) – is applicable.
- 2.2.2 If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection.
- 2.2.3 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention](#) and [Humanitarian Protection](#), and the Asylum Casework Instruction on [Restricted Leave](#).

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### 2.3 Particular social group

- 2.3.1 Persons in China at risk of 'double jeopardy' do not form a particular social group (PSG) within the meaning of the 1951 UN Refugee Convention. This is because they do not possess a common immutable (or innate) characteristic that cannot be changed or a characteristic that is so fundamental to human identity that they should not be required to change it, they are not perceived as different and they do not have a distinct identity in Chinese society.
- 2.3.2 In the absence of a link to one of the five Convention reasons necessary for the grant of refugee status, the question to be addressed in each case will

be whether the person will face a real risk of serious harm sufficient to qualify for Humanitarian Protection (HP).

- 2.3.3 For further guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.4 Assessing risk

- 2.4.1 The country guidance case of [JC \(double jeopardy: art 10 CL\) China CG \[2008\] UKIAT 00036 \(14 May 2008\)](#), the Tribunal found that, whilst there is a risk of prosecution or re-prosecution under Articles 7 and 10 of the Chinese Criminal Law for overseas offenders returned to China, use of the legal provisions is discretionary and extremely rare. Without particular aggravating factors, the risk falls well below the level required to engage international protection [para 273(17)].
- 2.4.2 The Tribunal in [JC](#) found that the risk of prosecution or re-prosecution will be a question of fact in individual cases but is more likely where:
- there has been a substantial amount of adverse publicity within China about a case
  - the proposed defendant has significantly embarrassed the Chinese authorities by their actions overseas
  - the offence is unusually serious (generally, snakehead cases do not have the significance they have in the West and are regarded as ordinary (but serious) crimes requiring no special treatment) ['snakeheads' are Chinese criminal gangs involved in trafficking, kidnapping and extortion]
  - political factors may increase the likelihood of prosecution or re-prosecution
  - the Chinese Government is also particularly concerned about corruption of Chinese officialdom [para 273(19)]
- 2.4.3 The conclusions in [JC](#) were confirmed by the country guidance case of [YF \(Double jeopardy – JC confirmed\) China CG \[2011\] UKUT 32 \(IAC\) \(26 January 2011\)](#), which added that 'political factors' (see above) may include 'the importance attached by the Chinese authorities to cracking down on drugs offenders' [headnote paragraph 1].
- 2.4.4 The available evidence affirms the findings in [JC](#) and [YF](#) that, while there are some circumstances where a person may be at risk of 'double jeopardy' on return to China, generally there is not a real risk of serious harm or persecution on this basis (see '[Double jeopardy](#)'). The Court of Appeal, in the case of [SG \(Iraq\) v Secretary of State for the Home Department \[2012\] EWCA Civ 940 \(13 July 2012\)](#), heard on 20-21 June 2012, stated that 'decision makers and tribunal judges are required to take Country Guidance determination into account, and to follow them unless very strong grounds supported by cogent evidence, are adduced justifying their not doing so' (paragraph 47). The Home Office does not consider that there are very strong grounds supported by cogent evidence to depart from the findings in [JC](#) and [YF](#).

- 2.3.1 For further guidance on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.5 Protection

- 2.5.1 As the person's fear is of persecution and/or serious harm by the state, they will not be able to avail themselves of the protection of the authorities.
- 2.5.2 For further guidance on assessing the availability of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.6 Internal relocation

- 2.4.1 As the person's fear is of persecution and/or serious harm by the state, they will not be able to relocate to escape that risk.
- 2.4.2 For further guidance on internal relocation and the factors to be considered, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.7 Certification

- 2.7.1 Where a claim is refused, it is likely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002. This is because in general the mistreatment feared, even if it did occur, does amount to persecution or serious harm. Decision makers must, however, consider each case on its facts.
- 2.7.2 For further guidance on certification, see [Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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# Country information

Updated: 15<sup>th</sup> March 2018

## 3. 'Double jeopardy'

### 3.1 The Criminal Law of the People's Republic of China (PRC)

#### 3.1.1 Article 7

'This law is applicable to PRC citizens who commit the crimes specified in this law outside the territory of the PRC; but those who commit the crimes, provided that this law stipulates a minimum sentence of less than a three-year fixed-term imprisonment for such crimes, may not be dealt with.

'This law is applicable to PRC state personnel and military personnel who commit the crimes specified in this law outside PRC territory.'

#### 3.1.2 Article 10

'Any person who commits a crime outside PRC territory and according to this law bear criminal responsibility may still be dealt with according to this law even if he has been tried in a foreign country; however, a person who has already received criminal punishment in a foreign country may be exempted from punishment or given a mitigated punishment.'<sup>1</sup>

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### 3.2 Application of the law

3.2.1 According to the UK Foreign and Commonwealth Office (FCO) in 2005, the circumstances in which a person would be punished in China for a crime committed in another country, for which he had been punished in that country, are not stipulated. The Chinese authorities are most likely to take this action if the crime had received a lot of publicity in China, if the victims were well-connected in China, if there was a political angle to the original crime or if the crimes were of a particular type that the authorities wanted to make an example of. As of July 2005, the British Embassy in Beijing is unaware of any such instances. The specific inclusion in the Criminal Law of 'exemptions' from second punishment in China for crimes committed abroad suggests that the authorities would not take further action against those convicted abroad for ordinary criminal offences<sup>2</sup>.

3.2.2 The Australian Department of Foreign Affairs and Trade (DFAT), in their December 2017 Country Information Report on China, stated:

'In practice, Chinese citizens convicted and punished for offences abroad may face punishment for the same offence on return to China. Authorities are less likely to pursue those who have committed offences overseas carrying a sentence in China of three years or less. Those convicted of offences that are more serious are more likely to be re-sentenced on return, depending on the offence and the severity of punishment served overseas:

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<sup>1</sup> Criminal Law, 1 October 1997, [url](#)

<sup>2</sup> FCO letter, 15 July 2005, [Annex A](#)



more severe punishment overseas would likely attract a lesser punishment on return.<sup>3</sup>

- 3.2.3 DFAT<sup>4</sup> and several other sources – CNN<sup>5</sup>, Reuters<sup>6</sup> and Quartz<sup>7</sup> (a US digital news outlet) – reported that, in April 2016, Chinese and Taiwanese nationals, many of whom were acquitted for cybercrime in Kenya – were deported to China to face prosecution there on the same charges. Quartz stated that the state news agency Xinhua (original link in Chinese) claimed that the Chinese Ministry of Public Security said that this was because the victims of their alleged cybercrimes were in China. The sources mention various numbers of Chinese and Taiwanese deportees: Quartz says there were 37, and then a later group of 41, Taiwanese and Chinese; CNN said it was a group of 45 Taiwanese ‘alongside some Chinese workers’; and Reuters said it was a group of 37 and a later group of 8 Taiwanese, adding that in January 2016 the Kenyan authorities considered the deportation of 76 Chinese whom the Taiwanese claimed were actually Taiwanese.
- 3.2.4 The main focus of the above articles was the political and diplomatic argument it occasioned between China and Taiwan<sup>8</sup>. DFAT noted that, while this ‘in part reflects political considerations with cross-strait relations (with Taiwan), the fact that mainland Chinese passport-holders were part of the group suggests that double jeopardy can apply to Chinese citizens who are acquitted abroad. The individuals remain in detention in China, as of October 2017’.<sup>9</sup>
- 3.2.5 Other instances of ‘double jeopardy’ could not be found. See the [bibliography](#) for a full list of sources consulted.
- 3.2.6 See also [Country Information and Guidance, China: Background Information, including actors of protection and internal relocation \(September 2015\)](#) for further information about the judicial system in China.

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<sup>3</sup> Aus DFAT, Country Info Report – China, p. 40, 21 December 2017, [url](#).

<sup>4</sup> Aus DFAT, Country Info Report – China, p. 40, 21 December 2017, [url](#).

<sup>5</sup> CNN, ‘Kenya defends forcing 45 Taiwanese onto a plane to China’, 14 April 2016, [url](#).

<sup>6</sup> Reuters, ‘Kenya defends deportation to China; Taiwan fumes’, 12 April 2016, [url](#).

<sup>7</sup> Quartz, ‘China will retry Taiwanese nationals’, 13 April, [url](#).

<sup>8</sup> The political status of Taiwan is discussed in: BBC News, Taiwan profile, 14 June 2017, [url](#).

<sup>9</sup> Aus DFAT, Country Info Report – China, p. 40, 21 December 2017, [url](#).

# Annex A: Letter from the Foreign and Commonwealth Office (FCO)

Your Reference  
Our Reference

15 July 2005

Country of Origin Information Service  
RDS  
Home Office



Dear [REDACTED]

Following our recent correspondence, I am confirming our understanding that the concept of double jeopardy is addressed in Chinese law.

Article 10 of the 1997 Criminal Code of the PRC states that "If any person commits a crime outside the territory of the PRC for which according to this Law he would bear criminal responsibility, he may still be dealt with according to this Law, even if he has already been tried in a foreign country. However, if he has already received criminal punishment in the foreign country, he may be exempted from punishment or given a mitigated sentence."

Article 7 states "This law is applicable to any citizen of the PRC who commits a crime outside the territory of the PRC that is specified in this Law. However, if for that crime this Law prescribes a maximum punishment of fixed-term imprisonment of not more than three years, he may not be dealt with."

The circumstances under which an individual would be punished in China for a crime committed in a foreign country for which he had already been punished in that country, are unstipulated. The Chinese authorities are most likely to take this action if the crime had received a lot of publicity in China, if the victims were well-connected in China, if there were a political angle to the original crime or if the crimes were of a particular type that the authorities wanted to make an example of. Our Embassy in Beijing is unaware of such instances. The specific inclusion in the Criminal Law of 'exemptions' from second punishment in China for crimes committed abroad suggests that the authorities would not take further action against ordinary criminal offences.

I can also confirm that we have no means of monitoring Chinese citizens once they have returned to China.

Yours

[REDACTED]  
North Asia and Pacific Research Group  
Research Analysts

# Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the [country information section](#). The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Law
  - Articles applied
  - Definition of 'double jeopardy'
- Application of the law
  - Prosecutions
  - Penalties

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# Bibliography

## Sources cited

**Australian Government, Department of Foreign Affairs and Trade (DFAT)**, DFAT Country Information Report – People's Republic of China, 21 December 2017, <http://dfat.gov.au/about-us/publications/Documents/country-information-report-china.pdf>. Last accessed: 9 January 2018

**BBC News**, 'Taiwan country profile', 14 June 2017, <http://www.bbc.co.uk/news/world-asia-16164639>. Last accessed: 5 January 2018

**CNN**, 'Kenya defends forcing 45 Taiwanese onto a plane to China', 14 April 2016, <http://edition.cnn.com/2016/04/13/asia/taiwan-kenya-china-abducted/index.html>. Last accessed: 5 January 2018

**Criminal Law of the People's Republic of China**, 1 October 1997, available at: <http://www.refworld.org/docid/3ae6b5cd2.html>. Last accessed: 5 January 2018

**Foreign and Commonwealth Office (FCO)** letter, 15 July 2005. Available on request

**Quartz**, 'China will retry Taiwanese nationals who were acquitted of any crime in Kenya', 13 April 2016, <https://qz.com/660993/china-will-retry-taiwanese-nationals-who-were-acquitted-of-any-crime-in-kenya/>. Last accessed: 9 January 2018

**Reuters**, 'Kenya defends deportation to China; Taiwan fumes', 12 April 2016, <https://www.reuters.com/article/us-taiwan-china-kenya/kenya-defends-deportations-to-china-taiwan-fumes-idUSKCN0X90EX>. Last accessed: 5 January 2018

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## Sources consulted but not cited

**Bin Lang and Hong Lu**, 'The Death Penalty in China: Policy, Practice and Reform', 2015. Hard copy only.

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# Version control

## Clearance

Below is information on when this note was cleared:

- version **2.0**
- valid from **March 2018**

## Changes from last version of this note

New template. Updated COI. No changes in guidance.

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